

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING)	
PHARMACY, INC. PRODUCTS LIABILITY)	
LITIGATION)	MDL No.: 2419
)	Dkt. No.: 1:13-md-2419
-----)	
)	Judge Rya W. Zobel
THIS DOCUMENT RELATES TO:)	
)	
All cases concerning Specialty Surgery Center,)	
Kenneth R. Lister, M.D., and Kenneth Lister,)	
M.D., P.C.)	
-----)	

PLAINTIFFS' STEERING COMMITTEE'S RESPONSE TO SSC DEFENDANTS'
STATEMENT OF UNDISPUTED MATERIAL FACTS

The Plaintiffs hereby submit this Response to the Statement of Undisputed Facts (Dkt. No. 2884) filed by Defendants, Specialty Surgery Center, PLLC ("SSC"), Kenneth R. Lister, M.D. ("Dr. Lister"), and Kenneth Lister, M.D., P.C. ("Dr. Lister's Practice") (collectively "SSC Defendants"), in Support of their Motion for Summary Judgment on the Plaintiffs' Claims for Strict Liability.

1. SSC was an ambulatory surgery center in Crossville, Tennessee, which was accredited by the Accreditation Association for Ambulatory Health Care, Inc. ("AAAHC"). 2nd Am. Master Compl., ¶ 22-23 [Docket No. 1719]; Deposition of Jean Atkinson, P. 211, L. 1-9.

RESPONSE: Admitted for purposes of summary judgment only.

2. Dr. Lister owned part of SSC. (Deposition of Kenneth R. Lister, M.D., P. 44, L. 8-10).

RESPONSE: Admitted for purposes of summary judgment that, in 2012 and 2013, Dr. Lister held an ownership interest in SSC between 5% and 8%. (Deposition of Kenneth R. Lister, M.D., at 44:7-23.

3. Dr. Lister is a board certified licensed anesthesiologist. (Deposition of Kenneth R. Lister, M.D., Exhibit 76).

RESPONSE: Admitted for purposes of summary judgment.

4. Dr. Lister's Practice was a professional corporation. When Dr. Lister was paid by Medicare, the payments he received went through that professional corporation. (Deposition of Kenneth R. Lister, M.D., P. 13, L. 21-25; P. 14, L. 1-17).

RESPONSE: This statement is immaterial for purposes of ruling on the motion for summary judgment, and it is vague and ambiguous. The PSC admits for purposes of summary judgment that Dr. Lister operated a professional corporation and that certain Medicare payments went to that corporation in the first instance..

5. The Plaintiffs sought care and medical treatment from SSC and Dr. Lister. 2nd Am. Master Compl., ¶ 151 [Docket No. 1719].

RESPONSE: Denied that plaintiffs only sought care and medical treatment for SSC and Dr. Lister. Admitted for purposes of summary judgment that the plaintiffs went to SSC to receive an injection of medicine to relieve pain, and that the plaintiffs in fact received injections of medicine at SSC from an anesthesiologist, Dr. Lister, who administered MPA compounded by NECC for that purpose.

6. As part of that medical treatment, Dr. Lister administered methylprednisolone acetate ("MPA") procured by SSC from the New England

Compounding Center (“NECC”) into the epidural space of the Plaintiffs. See 2nd Am. Master Compl., ¶ 23, 153-154 [Docket No. 1719].

RESPONSE: Denied as stated. Admitted that, in connection with sale of medicine to patients by SSC and Dr. Lister, Plaintiffs received injections from Dr. Lister and that the injections were MPA that SSC had purchased from NECC.

Date: July 20, 2016

Respectfully submitted:

/s/ Benjamin A. Gastel

J. Gerard Stranch, IV
Benjamin A. Gastel
Anthony A. Orlandi
BRANSTETTER, STRANCH &
JENNINGS, PLLC
223 Rosa L. Parks Ave., Suite 200
Nashville, TN 37203
Telephone: 615/254-8801
Facsimile: 615/255-5419
gerards@bsjfirm.com
beng@bsjfirm.com
aorlandi@bsjfirm.com

Plaintiffs' Steering Committee and TN Chair

Thomas M. Sobol
Kristen Johnson Parker
HAGENS BERMAN SOBOL SHAPIRO, LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
Telephone: 617/482-3700
Facsimile: 617/482-3003
tom@hbsslaw.com
kristenjp@hbsslaw.com

Plaintiffs' Lead Counsel

Annika K. Martin
Mark P. Chalos
LIEFF CABRASER, HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013

Telephone: 212/355-9500
Facsimile: 212/355-9592
akmartin@lchb.com
mchalon@lchb.com

Federal/State Liaison

Marc E. Lipton
LIPTON LAW
18930 W. 10 Mile Road
Southfield, MI 48075
Telephone: 248/557-1688
Facsimile: 248/557-6344
marc@liptonlaw.com

Kimberly A. Dougherty
JANET, JENNER & SUGGS, LLC
31 St. James Avenue, Suite 365
Boston, MA 02116
Telephone: 617/933-1265
kdougherty@myadvocates.com

Mark Zamora
ZAMORA FIRM
6 Concourse Parkway, 22nd Floor
Atlanta, GA 30328
Telephone: 404/451-7781
Facsimile: 404/506-9223
mark@markzamora.com

Patrick T. Fennell (VSB 40393)
CRANDALL & KATT
366 Elm Avenue, S.W.
Roanoke, VA 24016
Telephone: 540/342-2000
Facsimile: 540/400-0616
pfennell@crandalllaw.com

Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I, Benjamin A. Gastel, hereby certify that I caused a copy of the foregoing document to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Date: July 20, 2016

/s/ *Benjamin A. Gastel*

Benjamin A. Gastel